

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CLARENCE MOORE,

Plaintiff,

v.

BRENNAN SHAY, et al.,

Defendants.

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Case No. 6:23-cv-34-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Clarence Moore, a Texas Department of Criminal Justice inmate proceeding pro se, brings this civil rights lawsuit under 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636.

Before the Court is Defendants' motion for summary judgment. Docket No. 35. On June 24, 2024, Judge Mitchell issued a Report and Recommendation recommending that the Court grant Defendants' motion and dismiss this case with prejudice. Judge Mitchell reviewed the parties' arguments and summary judgment evidence and determined that Plaintiff's excessive force claim lacks merit and that Defendants are entitled to qualified immunity. Docket No. 11. Plaintiff filed objections. Docket No. 67.

Where a party timely objects to the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28


U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

In his objections, Plaintiff argues that the *Hudson* factors weigh in his favor because Defendants maliciously and sadistically used force to harm him after he was restrained on the floor and posed no threat to them. Docket No. 67 at 2. But as the Report explains, surveillance video submitted by Defendants shows that Plaintiff continued to struggle after being taken to the floor and until officers were able to subdue him. Docket No. 35, Ex. A. Also, the documented injuries and his complaints to the nurse are consistent with Plaintiff hitting his head while being taken to the floor and not with a malicious and sadistic use of force. *See id.*, Ex. C (infirmity photos after incident); Docket No. 37, Ex. E (TDCJ medical records). Further, Plaintiff’s objections ignore the fact that he precipitated the use-of-force incident by resisting officers and assaulting another inmate. Docket No. 35, Ex. A; *id.*, Ex. D. As in *Waddleton v. Rodriguez*, 750 F. App’x 248, 254–56 (5th Cir. 2018), Plaintiff’s actions here created the need for force, and the summary judgment evidence demonstrates that the force used was not excessive to the need.

Having conducted a de novo review of the record in this case and the Magistrate Judge’s Report, the Court has determined that the Report is correct, and Plaintiff’s objections are without merit. Accordingly, the Court hereby

ADOPTS the Report of the Magistrate Judge (Docket No. 59) as the opinion of the District Court and **GRANTS** Defendants' motion for summary judgment (Docket No. 35). Plaintiff's claims are **DISMISSED** with prejudice.

So **ORDERED** and **SIGNED** this **12th** day of **September, 2024**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE